

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

FRANKLIN J. SPENCER,

Petitioner,

v.

WISCONSIN DEPARTMENT OF
CORRECTIONS and WILLIAM
POLLARD,

Respondents.

Case No. 19-CV-561-JPS

ORDER

On April 18, 2019, Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket #1). On June 21, 2019, Magistrate Judge Nancy Joseph reviewed the petition, which challenges a 2003 judgment of conviction for felony bail jumping. Magistrate Joseph determined that the petition must be denied because it is untimely under the one-year statute of limitations that applies to Section 2254 petitions, and there appears to be no basis for equitable tolling. (Docket #9 at 2); 28 U.S.C. § 2244(d)(1). Additionally, Petitioner did not establish that he exhausted his remedies by seeking review of the conviction through the Wisconsin state court system. (Docket #9 at 2). Finally, Magistrate Joseph determined that Petitioner's claims were based on an error in the application of a state sentencing law, which is not subject to habeas review. *Id.* at 3.

Pursuant to General Local Rule 72(c), 28 U.S.C. § 636(b)(1)(B), and Federal Rule of Civil Procedure 72(b), the parties were advised that written objections to the magistrate's recommendation, or any part thereof, could be filed within fourteen days of the date of service of the recommendation.

Id. The Court must review *de novo* any portion of the magistrate's recommendation to which a party properly objects, and may accept, reject, or modify any part of the recommendation. Fed. R. Civ. P. 72(b)(3). Petitioner has failed to object or otherwise respond to Magistrate Joseph's recommendation.

Accordingly,

IT IS ORDERED that Magistrate Judge Nancy Joseph's report and recommendation (Docket #9) be and the same is hereby **ADOPTED**;


IT IS FURTHER ORDERED that Petitioner's petition for writ of habeas corpus (Docket #1) be and the same is hereby **DENIED**; and

IT IS FURTHER ORDERED that this action be and the same is hereby **DISMISSED**.

The Clerk of the Court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 19th day of July, 2019.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge